

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 234

HOUSE BILL 2440

AN ACT

AMENDING TITLE 12, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 15;
RELATING TO LAWSUITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Title 12, chapter 6, Arizona Revised Statutes, is amended
3 by adding article 15, to read:

4 ARTICLE 15. PUBLIC PARTICIPATION IN GOVERNMENT

5 12-751. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "EXERCISE OF THE RIGHT OF PETITION" MEANS ANY WRITTEN OR ORAL
8 STATEMENT THAT FALLS WITHIN THE CONSTITUTIONAL PROTECTION OF FREE SPEECH AND
9 THAT IS MADE AS PART OF AN INITIATIVE, REFERENDUM OR RECALL EFFORT OR THAT IS
10 ALL OF THE FOLLOWING:

11 (a) MADE BEFORE OR SUBMITTED TO A LEGISLATIVE OR EXECUTIVE BODY OR ANY
12 OTHER GOVERNMENTAL PROCEEDING.

13 (b) MADE IN CONNECTION WITH AN ISSUE THAT IS UNDER CONSIDERATION OR
14 REVIEW BY A LEGISLATIVE OR EXECUTIVE BODY OR ANY OTHER GOVERNMENTAL
15 PROCEEDING.

16 (c) MADE FOR THE PURPOSE OF INFLUENCING A GOVERNMENTAL ACTION,
17 DECISION OR RESULT.

18 2. "GOVERNMENTAL PROCEEDING" MEANS ANY PROCEEDING, OTHER THAN A
19 JUDICIAL PROCEEDING, BY AN OFFICER, OFFICIAL OR BODY OF THIS STATE AND ANY
20 POLITICAL SUBDIVISION OF THIS STATE, INCLUDING BOARDS AND COMMISSIONS, OR BY
21 AN OFFICER, OFFICIAL OR BODY OF THE FEDERAL GOVERNMENT.

22 3. "LEGAL ACTION" MEANS ANY ACTION, CLAIM, CROSS-CLAIM OR COUNTERCLAIM
23 FOR DAMAGES THAT IS BASED ON THE DEFENDANT'S EXERCISE OF THE RIGHT OF
24 PETITION.

25 12-752. Strategic lawsuits against public participation; motion
26 to dismiss

27 A. IN ANY LEGAL ACTION THAT INVOLVES A PARTY'S EXERCISE OF THE RIGHT
28 OF PETITION, THE DEFENDING PARTY MAY FILE A MOTION TO DISMISS THE ACTION
29 UNDER THIS SECTION. WHEN POSSIBLE, THE COURT SHALL GIVE CALENDAR PREFERENCE
30 TO AN ACTION THAT IS BROUGHT UNDER THIS SUBSECTION AND SHALL CONDUCT AN
31 EXPEDITED HEARING AFTER THE MOTION IS FILED WITH THE COURT AND NOTICE OF THE
32 MOTION HAS BEEN SERVED AS PROVIDED BY COURT RULE.

33 B. THE COURT SHALL GRANT THE MOTION UNLESS THE PARTY AGAINST WHOM THE
34 MOTION IS MADE SHOWS THAT THE MOVING PARTY'S EXERCISE OF THE RIGHT OF
35 PETITION DID NOT CONTAIN ANY REASONABLE FACTUAL SUPPORT OR ANY ARGUABLE BASIS
36 IN LAW AND THAT THE MOVING PARTY'S ACTS CAUSED ACTUAL COMPENSABLE INJURY TO
37 THE RESPONDING PARTY. IN MAKING ITS DETERMINATION, THE COURT SHALL CONSIDER
38 THE PLEADINGS AND SUPPORTING AND OPPOSING AFFIDAVITS STATING FACTS ON WHICH
39 THE LIABILITY OR DEFENSE IS BASED. AT THE REQUEST OF THE MOVING PARTY, THE
40 COURT SHALL MAKE FINDINGS WHETHER THE LAWSUIT WAS BROUGHT TO DETER OR PREVENT
41 THE MOVING PARTY FROM EXERCISING CONSTITUTIONAL RIGHTS AND IS THEREBY BROUGHT
42 FOR AN IMPROPER PURPOSE, INCLUDING TO HARASS OR TO CAUSE UNNECESSARY DELAY OR
43 NEEDLESS INCREASE IN THE COST OF LITIGATION. IF THE COURT FINDS THAT THE
44 LAWSUIT WAS BROUGHT TO DETER OR PREVENT THE EXERCISE OF CONSTITUTIONAL RIGHTS

1 OR OTHERWISE BROUGHT FOR AN IMPROPER PURPOSE, THE MOVING PARTY IS ENCOURAGED
2 TO PURSUE ADDITIONAL SANCTIONS AS PROVIDED BY COURT RULE.

3 C. THE MOTION TO DISMISS MAY BE FILED WITHIN NINETY DAYS AFTER THE
4 SERVICE OF THE COMPLAINT OR, IN THE COURT'S DISCRETION, AT ANY LATER TIME ON
5 TERMS THAT THE COURT DEEMS PROPER.

6 D. IF THE COURT GRANTS THE MOTION TO DISMISS, THE COURT SHALL AWARD
7 THE MOVING PARTY COSTS AND REASONABLE ATTORNEY FEES, INCLUDING THOSE INCURRED
8 FOR THE MOTION. IF THE COURT FINDS THAT A MOTION TO DISMISS IS FRIVOLOUS OR
9 SOLELY INTENDED TO DELAY, THE COURT SHALL AWARD COSTS AND REASONABLE ATTORNEY
10 FEES TO THE PREVAILING PARTY ON THE MOTION. FOR THE PURPOSES OF THIS
11 SUBSECTION, "COSTS" MEANS ALL COSTS THAT ARE REASONABLY INCURRED IN
12 CONNECTION WITH A MOTION TO DISMISS PURSUANT TO THIS SECTION AND INCLUDES
13 FILING FEES, RECORD PREPARATION AND DOCUMENT COPYING FEES, DOCUMENTED TIME
14 AWAY FROM EMPLOYMENT TO CONFER WITH COUNSEL OR ATTEND CASE RELATED
15 PROCEEDINGS, EXPERT WITNESS FEES, TRAVEL EXPENSES AND ANY OTHER COSTS THAT
16 THE COURT DEEMS APPROPRIATE.

17 E. THIS ARTICLE DOES NOT:

18 1. AFFECT, LIMIT OR PRECLUDE THE RIGHT OF THE MOVING PARTY TO ANY
19 REMEDY OTHERWISE AUTHORIZED BY LAW.

20 2. APPLY TO AN ENFORCEMENT ACTION THAT IS BROUGHT IN THE NAME OF THIS
21 STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

22 3. CREATE ANY PRIVILEGES OR IMMUNITIES OR OTHERWISE AFFECT, LIMIT OR
23 PRECLUDE ANY PRIVILEGES OR IMMUNITIES AUTHORIZED BY LAW.

24 4. LIMIT OR PRECLUDE A LEGISLATIVE OR EXECUTIVE BODY OR A PUBLIC
25 AGENCY FROM ENFORCING THE RULES OF PROCEDURE AND RULES OF ORDER OF THE BODY
26 OR AGENCY.

27 Sec. 2. Legislative findings and declarations

28 A. It is the policy of this state that the rights of citizens and
29 organizations under the constitutions of the United States and this state to
30 be involved and participate freely in the process of government shall be
31 encouraged and safeguarded with great diligence. The information, reports,
32 opinions, claims, arguments and other expressions that are provided by
33 citizens and organizations are vital to effective law enforcement, the
34 operation of government, the making of public policy and decisions and the
35 continuation of representative democracy. The laws, courts and other
36 agencies of this state and its political subdivisions shall provide the
37 utmost protection for the free exercise of these petition, speech and
38 association rights.

39 B. The legislature finds that civil actions have been filed against
40 citizens and organizations of this state as the result of the valid exercise
41 of their constitutional rights of petition, speech and association. The
42 threat of strategic lawsuits against public participation, personal liability
43 and burdensome litigation costs significantly chill and diminish citizen
44 participation in government, voluntary public service and the exercise of
45 these important constitutional rights. The threat of strategic lawsuits

1 against public participation further deprives government bodies of the free
2 flow of ideas, information and opinions that are essential to carrying out
3 their functions. This abuse of the judicial process can and has been used as
4 a means of intimidating, harassing or punishing citizens and organizations
5 for involving themselves in public affairs.

6 C. It is in the public interest and it is the purpose of this article
7 to strike a balance between the rights of persons to file lawsuits for injury
8 and the constitutional rights of persons of petition, speech and association,
9 to protect and encourage public participation in government to the maximum
10 extent allowed by law, to establish an efficient process for identification
11 and adjudication of strategic lawsuits against public participation and to
12 provide for costs and attorney fees.

13 Sec. 3. Emergency

14 This act is an emergency measure that is necessary to preserve the
15 public peace, health or safety and is operative immediately as provided by
16 law.

APPROVED BY THE GOVERNOR APRIL 28, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 28, 2006.